

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

DWAYNE MILLER,

Appellant,

v.

MISSOURI DEPARTMENT OF CORRECTIONS,

Respondent.

DOCKET NUMBER WD76649

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: June 3, 2014

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Daniel R. Green, Judge

JUDGES

Division One: Ellis, P.J., and Mitchell and Gabbert, JJ.

CONCURRING.

ATTORNEYS

Dwayne Miller
Licking, MO

Appellant, *pro se*,

Chris Koster, Attorney General
Martha E. Ravenhill, Assistant Attorney General
Jefferson City, MO

Attorneys for Respondent.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

DWAYNE MILLER,

Appellant,

v.

MISSOURI DEPARTMENT OF
CORRECTIONS,

Respondent.

OPINION FILED:
June 3, 2014

WD76649

Cole County

Before Division One Judges:

Joseph M. Ellis, Presiding Judge, and Karen King
Mitchell and Anthony Rex Gabbert, Judges

Dwayne Miller appeals from an order and judgment denying his petition for declaratory judgment and entering judgment on behalf of the Missouri Department of Corrections. Miller raises two points on appeal. In his first point, Miller contends that he was entitled to an earlier parole hearing than that granted to him because the Board of Probation and Parole regulation in effect at the time of his offenses (setting a minimum parole eligibility requirement of twelve years) was applicable to him rather than the regulation in effect at the time he received a parole hearing (setting a minimum parole eligibility requirement of fifteen years). In his second point, Miller contends that he was not sentenced to life without parole, and therefore, he is entitled to a maximum release date or parole release date that would not require him to serve his full sentences of life in prison. Miller further contends that the mandatory language of the applicable regulation created a liberty interest in parole once he satisfied the applicable minimum parole eligibility requirement.

AFFIRMED.

Division One holds:

Miller has been incarcerated for twenty-three years and has received two parole hearings, in 2004 and 2009. Therefore, whether Miller was required to serve twelve years or fifteen years

prior to receiving a parole hearing was not an existing controversy before the trial court, and is thus moot.

Even if Miller's claim that he should have been eligible for a parole hearing after serving twelve years of his sentence were not moot, it would fail, as both the applicable regulation and statute in effect at the time of Miller's offenses (14 CSR 80-2.010(4)(H) (Nov. 1989) and section 558.019.3 RSMo, respectively) required Miller to serve a fifteen-year minimum sentence prior to becoming eligible for parole.

Miller's contentions that he is entitled to a parole release date and a conditional release date are also without merit. Section 217.690 RSMo and the regulations promulgated thereunder do not create a liberty interest in parole, and section 558.011.4 RSMo does not provide for a conditional release term in Miller's circumstances. We affirm the trial court's denial of Miller's declaratory judgment petition and its entry of judgment in favor of the Department of Corrections.

Opinion by: Karen King Mitchell, Judge

June 3, 2014

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